

LEGISLATURE OF NEBRASKA
NINETY-EIGHTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 906

Introduced by Stuhr, 24; Combs, 32; Foley, 29; Hudkins, 21;
Kruse, 13; McDonald, 41; Price, 26; Schimek, 27

Read first time January 8, 2004

Committee: Health and Human Services

A BILL

1 FOR AN ACT relating to body art; to amend sections 71-110.01,
2 71-162, 71-340 to 71-343, 71-364, 71-376, 71-377, 71-386,
3 71-396, 71-397, 71-398, 71-3,100, 71-3,104, 71-3,105,
4 71-3,106, 71-3,169, 71-3,170, 71-3,174, 71-3,177, and
5 71-3,179, Reissue Revised Statutes of Nebraska; to
6 provide for licensure and regulation of body branding,
7 body piercing, permanent color technology, and tattooing;
8 to provide a penalty; to harmonize provisions; to provide
9 an operative date; and to repeal the original sections.
10 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 71-110.01, Reissue Revised Statutes
2 of Nebraska, is amended to read:

3 71-110.01. (1) The department may provide for the
4 renewal of a credential to engage in business as an apprentice
5 training salon; a body art facility; a cosmetic establishment; a
6 cosmetology salon; an electrology establishment; an emergency
7 medical service; an emergency medical training program; an
8 esthetics salon; a funeral establishment or branch establishment; a
9 massage therapy establishment; a massage therapy school; a nail
10 technology salon; a nail technology school; a satellite cosmetology
11 classroom; a school of cosmetology; a school of electrology; or a
12 school of esthetics upon request of the credentialed entity as
13 provided in this section. The credential renewals provided for in
14 this section shall be accomplished in such manner as the
15 department, with the approval of the appropriate professional
16 board, shall establish by rule and regulation. The request for
17 renewal need not be in any particular form and shall be accompanied
18 by the renewal fee, if applicable. Such fee shall be paid not
19 later than the date of the expiration of such credential.

20 (2) At least thirty days before the expiration of a
21 credential, the department shall notify each credentialed entity by
22 a letter addressed to the place of business as noted upon the
23 department's records. Any credentialed entity which fails to pay
24 the renewal fee on or before the date of expiration of the
25 credential shall be given a second notice in the same manner as the
26 first notice advising the entity (a) of the failure to pay the
27 renewal fee, (b) that the credential has expired, (c) that the
28 entity is subject to an administrative penalty under section

1 71-164.01 if the entity engages in business after the expiration
2 date and prior to renewal, reinstatement, or issuance of a
3 credential, (d) that upon the receipt of the renewal fee and the
4 required late fee within thirty days after the expiration date, no
5 order of revocation will be entered, and (e) that upon the failure
6 to receive the fees, the credential will be revoked in the manner
7 prescribed in section 71-149.

8 Sec. 2. Section 71-162, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 71-162. (1) It is the intent of the Legislature that the
11 revenue to cover the cost of the credentialing system administered
12 by the department is to be derived from General Funds, cash funds,
13 federal funds, gifts, grants, or fees from individuals or entities
14 seeking credentials. The credentialing system includes the
15 totality of the credentialing infrastructure and the process of
16 issuance and renewal of credentials, examinations, inspections,
17 investigations, continuing competency, compliance assurance, and
18 the credentialing review process for the following individuals and
19 entities that provide health services and health-related services:

20 (a) Individuals in the practice of acupuncture; advanced
21 practice nursing; asbestos abatement, inspection, project design,
22 and training; athletic training; audiology; speech-language
23 pathology; chiropractic; dentistry; dental hygiene; environmental
24 health; hearing aid instrument dispensing and fitting; lead-based
25 paint abatement, inspection, project design, and training; medical
26 nutrition therapy; medical radiography; medication aide services;
27 medicine and surgery; mental health practice; nursing; nurse aide
28 services; nursing home administration; occupational therapy;

1 optometry; osteopathic medicine; pharmacy; physical therapy;
2 podiatry; psychology; radon detection, measurement, and mitigation;
3 respiratory care; social work; swimming pool operation; veterinary
4 medicine and surgery; water system operation; constructing or
5 decommissioning water wells and installing water well pumps and
6 pumping equipment; and wholesale drug distribution; and

7 (b) Individuals in the practice of and entities in the
8 business of body art; cosmetology; electrology; emergency medical
9 services; esthetics; funeral directing and embalming; massage
10 therapy; and nail technology.

11 (2) The department shall determine the cost of the
12 credentialing system for such individuals and entities by
13 calculating the total of the base costs, the variable costs, and
14 any adjustments as provided in sections 71-162.01 to 71-162.03.

15 (3) When fees are to be established pursuant to section
16 71-162.04 for individuals or entities other than individuals in the
17 practice of constructing or decommissioning water wells and
18 installing water well pumps and pumping equipment, the department,
19 upon recommendation of the appropriate board if applicable, shall
20 base the fees on the cost of the credentialing system and shall
21 include usual and customary cost increases, a reasonable reserve,
22 and the cost of any new or additional credentialing activities.
23 For individuals in the practice of constructing or decommissioning
24 water wells and installing water well pumps and pumping equipment,
25 the Water Well Standards and Contractors' Licensing Board shall
26 establish the fees as otherwise provided in this subsection. All
27 such fees shall be collected as provided in section 71-163.

28 Sec. 3. Section 71-340, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 71-340. Sections 71-340 to 71-3,235 and sections 8 to
3 20, 30 to 36, 43, and 44 of this act shall be known and may be
4 cited as the Nebraska Cosmetology Act.

5 Sec. 4. Section 71-341, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 71-341. The Legislature finds that: (1) A great number
8 of Nebraska citizens regularly demand and receive cosmetology, nail
9 technology, esthetics, ~~and~~ electrology, and body art services; (2)
10 the practices of cosmetology, nail technology, esthetics, ~~and~~
11 electrology, and body art involve the use of implements and
12 chemicals that, if used or applied improperly, can be hazardous to
13 human health and safety; (3) inadequate sanitation in the practice
14 of cosmetology, nail technology, esthetics, ~~or~~ electrology, or body
15 art can encourage the spread of contagious diseases, infections,
16 and infestations to the detriment of the health and safety of the
17 public; (4) the knowledge of proper sanitation techniques and the
18 proper use of implements and chemicals can best be gained by
19 rigorous and extensive training in cosmetology, nail technology,
20 esthetics, and electrology at institutions operated exclusively for
21 such purposes; (5) the need of the public to be served by
22 well-trained persons and the need of cosmetology, nail technology,
23 esthetics, and electrology students to receive an appropriate
24 education can best be met through the enactment of standards for
25 the approval of schools of cosmetology, nail technology schools,
26 schools of esthetics, and schools of electrology; (6) the
27 effectiveness of cosmetology, nail technology, esthetics, or
28 electrology training and the competency to practice can best be

1 demonstrated by the passage of an impartially administered
2 examination before a person is permitted to practice; (7)
3 continuing competency can best be demonstrated by participation in
4 continuing competency activities; (8) the establishment and
5 maintenance of a safe environment in places where cosmetology, nail
6 technology, esthetics, ~~ex~~ electrology, or body art is practiced can
7 best be ensured through the establishment of operating and sanitary
8 requirements for the safe and sanitary operation of such places;
9 (9) the need of the public to be served by well-trained persons and
10 the need of body art students to receive an appropriate education
11 can best be met through the enactment of standards for the approval
12 and designation of training programs for training in body art; (10)
13 the protection of the health and safety of its citizens is a
14 principal concern and duty of the State of Nebraska; and ~~(10)~~ (11)
15 the reasonable regulation and limitation of a field of practice or
16 occupation for the purpose of protecting the health and safety of
17 the public is a legitimate and justified exercise of the police
18 power of the state.

19 Sec. 5. Section 71-342, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 71-342. The Legislature declares its intent to implement
22 the findings specified in section 71-341 through the Nebraska
23 Cosmetology Act, to regulate the practices and professions of
24 cosmetology, nail technology, esthetics, ~~and~~ electrology, and body
25 art and cosmetology, nail technology, esthetics, ~~and~~ electrology,
26 and body art education in all forms, to limit the practice and
27 teaching of cosmetology, nail technology, esthetics, ~~ex~~
28 electrology, or body art to persons and institutions as stipulated

1 in the Nebraska Cosmetology Act, and to penalize persons violating
2 such act. The Legislature directs that all interpretations of the
3 act be made with full cognizance of the findings and intentions
4 expressed in this section and section 71-341.

5 Sec. 6. Section 71-343, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 71-343. For purposes of the Nebraska Cosmetology Act,
8 unless the context otherwise requires, the definitions found in
9 sections 71-344 to 71-372 and sections 8 to 20 of this act shall be
10 used.

11 Sec. 7. Section 71-364, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 71-364. Practitioner means a person who performs any or
14 all of the practices of cosmetology, nail technology, esthetics, ~~ex~~
15 electrology, or body art for compensation.

16 Sec. 8. Body art means body piercing, branding,
17 permanent color technology, and tattooing.

18 Sec. 9. Body art facility means any room or space or any
19 part thereof where body art is performed or where the business of
20 body art is conducted.

21 Sec. 10. Body piercing means puncturing the skin of a
22 person by aid of needles or other instruments designed or used to
23 puncture the skin for the purpose of inserting removable jewelry or
24 other objects through the human body, except that body piercing
25 excludes puncturing the external part of the human earlobe.

26 Sec. 11. Body piercing facility means any room or space
27 or any part thereof where body piercing is performed or where the
28 business of body piercing is conducted.

1 Sec. 12. Branding means a permanent mark made on human
2 tissue by burning with a hot iron or other instrument.

3 Sec. 13. Guest body artist means a person registered
4 under the Nebraska Cosmetology Act to demonstrate body art products
5 or procedures for the purpose of imparting professional knowledge
6 and information to persons licensed or registered under the
7 Nebraska Cosmetology Act or to persons owning or operating a
8 licensed body art facility under the sponsorship of a licensed body
9 art facility or a person licensed in Nebraska to perform body art.

10 Sec. 14. Permanent color technician and tattoo artist
11 means a person who performs tattooing or permanent color
12 technology, or both.

13 Sec. 15. Permanent color technology means the process by
14 which the skin is marked or colored by insertion of nontoxic dyes
15 or pigments into or under the subcutaneous portion of the skin so
16 as to form indelible marks for cosmetic or figurative purposes.

17 Sec. 16. Practices regulated under the Nebraska
18 Cosmetology Act means body art, cosmetology, electrology,
19 esthetics, and nail technology.

20 Sec. 17. Tattoo means the indelible mark, figure, or
21 decorative design introduced by insertion of nontoxic dyes or
22 pigments into or under the subcutaneous portion of the skin upon
23 the body of a live human being.

24 Sec. 18. Tattoo facility means any room or space or any
25 part thereof where permanent color technology or tattooing is
26 performed or where the business of permanent color technology or
27 tattooing is conducted.

28 Sec. 19. Tattooing means the process by which the skin

1 is marked or colored by insertion of nontoxic dyes or pigments into
2 or under the subcutaneous portion of the skin so as to form
3 indelible marks for cosmetic or figurative purposes.

4 Sec. 20. Temporary body art practitioner means a person
5 registered under the Nebraska Cosmetology Act to perform any or all
6 of the practices of body art for a limited time under the
7 supervision of a person licensed under such act.

8 Sec. 21. Section 71-376, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 71-376. The department shall:

11 (1) With the approval of the board, adopt, promulgate,
12 and revise necessary rules and regulations, including procedures
13 for approving cosmetology, nail technology, and electrology
14 establishments and body art facilities;

15 (2) With the approval of the board, develop standards in
16 cooperation with the owners of cosmetology, nail technology, and
17 electrology establishments and body art facilities to be used in
18 the evaluation and approval of such establishments and facilities;

19 (3) Review such standards at least once every five years;

20 (4) Survey each licensed cosmetology, nail technology,
21 and electrology establishment and body art facility every two years
22 for the purpose of determining ~~the establishment's~~ compliance with
23 all relevant laws, rules, and regulations; and

24 (5) Approve for renewal of its license each cosmetology,
25 nail technology, or electrology establishment or body art facility
26 found to be operating in compliance with all relevant laws, rules,
27 and regulations.

28 Sec. 22. Section 71-377, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 71-377. The board shall:

3 (1) Review all reports of alleged violations investigated
4 by the department and recommend action as authorized under the
5 Nebraska Cosmetology Act;

6 (2) Approve all licensing examinations used;

7 (3) Serve as consultant to the department in all matters
8 relating to ~~cosmetology, nail technology, esthetics, or electrology~~
9 the practices regulated under the act and to the enforcement and
10 implementation of the act;

11 (4) Recommend applicants to the department for the
12 professional level position which will be responsible for the daily
13 administration of the act; and

14 (5) Establish continuing competency requirements for
15 persons licensed under the act for adoption and promulgation by the
16 department in rules and regulations. Continuing education is
17 sufficient to meet continuing competency requirements. The
18 requirements may also include, but not be limited to, one or more
19 of the continuing competency activities listed in section 71-161.09
20 which a licensee may select as an alternative to continuing
21 education.

22 Sec. 23. Section 71-386, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 71-386. (1) All practitioners shall be licensed or
25 registered by the department under the Nebraska Cosmetology Act in
26 a category or categories appropriate to their practice.

27 (2) Licensure shall be required before any person may
28 engage in the full, unsupervised practice or teaching of

1 cosmetology, electrology, esthetics, ~~or~~ nail technology, or body
2 art, and no person may assume the title of cosmetologist,
3 electrologist, esthetician, instructor, nail technician, nail
4 technology instructor, ~~or, on or after January 1, 2003,~~ esthetics
5 instructor, permanent color technician and tattoo artist, body
6 piercer, or body brander without first being licensed by the
7 department under the Nebraska Cosmetology Act.

8 Sec. 24. Section 71-396, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 71-396. Every person holding a license or registration
11 issued by the department under the Nebraska Cosmetology Act shall
12 display it in a conspicuous place in his or her principal place of
13 employment, and every cosmetology establishment, ~~and~~ electrology
14 establishment, and body art facility shall so display the licenses
15 and registrations of all practitioners there employed.

16 Sec. 25. Section 71-397, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 71-397. (1) Each license issued under the Nebraska
19 Cosmetology Act shall expire and be subject to renewal every two
20 years. Each cosmetology and instructor's license shall expire and
21 be subject to renewal on December 31 of each even-numbered year.
22 Each esthetician's and esthetics instructor's license shall expire
23 and be subject to renewal on September 30 of each even-numbered
24 year. Each electrologist's and electrology instructor's license
25 shall expire and be subject to renewal on July 31 of each
26 odd-numbered year. Each license to practice body art shall expire
27 and be subject to renewal on March 31 of each odd-numbered year.

28 (2) Procedures for renewal, reinstatement, and assessment

1 of late fees and administrative penalties shall be in accordance
2 with sections 71-110 and 71-164.01. If an electrology instructor's
3 license has been expired or has been on inactive status for five
4 years or more, such electrology instructor shall retake and pass
5 the electrology instructor's examination before such license is
6 reinstated.

7 Sec. 26. Section 71-398, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 71-398. Registration shall be required before any person
10 may act as a guest artist, guest body artist, cosmetician, student,
11 apprentice, student instructor, ~~or~~ temporary practitioner, or
12 temporary body art practitioner, and no person shall assume any
13 title indicative of any of such areas of activity without first
14 being registered by the department under the Nebraska Cosmetology
15 Act.

16 Sec. 27. Section 71-3,100, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 71-3,100. Applicants for registration as guest artists
19 or guest body artists shall show evidence of licensure in another
20 jurisdiction or other evidence as directed by the board sufficient
21 to demonstrate that they possess education or experience of benefit
22 to licensed or registered practitioners and are under the
23 sponsorship of a licensed cosmetology establishment or
24 cosmetologist for guest artists or a licensed body art facility or
25 person licensed to practice body art for guest body artists.

26 Sec. 28. Section 71-3,104, Reissue Revised Statutes of
27 Nebraska, is amended to read:

28 71-3,104. An applicant for registration as a temporary

1 practitioner or temporary body art practitioner shall show evidence
2 that his or her completed application for licensure has been
3 accepted by the department, that he or she has not failed any
4 portion of the licensure examination, and that he or she has been
5 accepted for work in a licensed cosmetology establishment or body
6 art facility, as appropriate, under the supervision of a licensed
7 practitioner.

8 Sec. 29. Section 71-3,105, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 71-3,105. Registration shall be granted for a set period
11 of time and cannot be renewed. Registration as a guest artist or
12 guest body artist shall expire two years following the initial date
13 of issuance. Registration as a cosmetician shall expire two years
14 following the initial date of issuance. Registration as a student,
15 apprentice, or student instructor shall expire upon successful
16 completion of the licensing examination or termination of
17 enrollment in a school of cosmetology, a school of electrology, a
18 school of esthetics, or an apprentice salon. Registration as a
19 temporary practitioner or temporary body art practitioner shall
20 expire six weeks following the written examination date or upon
21 receipt of examination results, whichever occurs first, except that
22 the registration of a temporary practitioner or temporary body art
23 practitioner who fails to take the first regularly scheduled
24 examination shall expire immediately after the beginning of the
25 examination unless the board finds that the temporary practitioner
26 or temporary body art practitioner was unable to attend the
27 examination due to an emergency or other valid circumstances, in
28 which case the board may extend the registration until six weeks

1 after the date of the next regularly scheduled written examination
2 or upon receipt of the examination results, whichever occurs first.
3 No registration may be extended in such manner more than once.

4 Sec. 30. No person shall perform tattooing or display a
5 sign to or in any other way advertise or purport to be a permanent
6 color technician and tattoo artist unless that person is licensed
7 by the board as a permanent color technician and tattoo artist. No
8 person shall perform body piercing or display a sign to or in any
9 other way advertise or purport to be in the business of body
10 piercing unless that person is licensed by the board to perform
11 body piercing. No person shall perform branding or display a sign
12 to or in any other way advertise or purport to be in the business
13 of branding unless that person is licensed by the board to perform
14 branding.

15 Sec. 31. (1) An applicant for licensure in any of the
16 practices of body art shall show to the satisfaction of the board
17 that the applicant:

18 (a) Has complied with the Nebraska Cosmetology Act and
19 the applicable rules and regulations adopted and promulgated under
20 the act;

21 (b) Is at least eighteen years of age;

22 (c) Has a high school diploma or equivalent education;
23 and

24 (d) Has submitted evidence of completion of education or
25 training prescribed and approved by the board as follows:

26 (i) (A) If the application is for a permanent color
27 technician and tattoo artist license, completion of a training
28 program under the direct supervision of a permanent color

1 technician and tattoo artist in this state designated by the board
2 or equivalent training in another jurisdiction approved by the
3 board;

4 (B) If the application is for a license to perform body
5 piercing, completion of a training program under the direct
6 supervision of a person or school in this state designated by the
7 board or equivalent training in another jurisdiction approved by
8 the board; and

9 (C) If the application is for a license to perform
10 branding, completion of a training program under the direct
11 supervision of a person or school in this state designated by the
12 board or equivalent training in another jurisdiction approved by
13 the board; and

14 (ii) Has passed an examination approved, administered, or
15 recognized by the board.

16 (2) An applicant seeking licensure as a permanent color
17 technician and tattoo artist or to be licensed to perform body
18 piercing or branding shall be required to demonstrate safety,
19 sanitation, and sterilization techniques by means of an inspection
20 conducted by the board to test the applicant's knowledge of
21 infection control practices and requirements.

22 Sec. 32. (1) No person shall operate or profess or
23 attempt to operate a body art facility unless such facility is
24 licensed by the department under the Nebraska Cosmetology Act. The
25 department shall not issue or renew a license for a body art
26 facility until all requirements of the Nebraska Cosmetology Act
27 have been complied with. No person shall engage in any of the
28 practices of body art in any location or premises other than a

1 licensed body art facility except as specifically permitted in the
2 Nebraska Cosmetology Act.

3 (2) The board shall issue to each qualified applicant a
4 license to operate a body art facility and to advertise the type of
5 body art services for which the facility is licensed.

6 (3) A person who holds a license shall notify the board
7 in writing of the regular address of the place or places where the
8 person performs or intends to perform body art. The board shall
9 keep a record of the place or places of business of each person who
10 holds a license.

11 Sec. 33. A permanent color technician and tattoo artist
12 and a person performing body piercing or branding shall meet the
13 following standards:

14 (1) Applicable sanitation standards adopted by the board;

15 (2) Use of appropriate sterilizing equipment, with
16 availability of hot and cold running water and a covered waste
17 receptacle;

18 (3) Keeping case history cards for each client for a
19 period of five years; and

20 (4) Any other standards which the board may adopt and
21 promulgate by rules and regulations.

22 Sec. 34. In order to maintain its license in good
23 standing, each body art facility shall operate in accordance with
24 the following requirements:

25 (1) The facility shall at all times comply with all
26 applicable provisions of the Nebraska Cosmetology Act and all rules
27 and regulations adopted and promulgated under such act;

28 (2) The owner of the facility or his or her agent shall

1 notify the department at least thirty days prior to any change of
2 ownership, name, or address, and within one week after a facility
3 is permanently closed, except in emergency circumstances as
4 determined by the department;

5 (3) No facility shall permit anyone other than an
6 appropriately licensed or registered person to perform any type of
7 body art to members of the general public upon its premises;

8 (4) The facility shall display a sign at each counter or
9 area used for such purposes indicating that it is a licensed body
10 art facility and that all persons performing body art are
11 appropriately licensed or registered;

12 (5) The facility shall permit any duly authorized agent
13 of the department to conduct an operation inspection or
14 investigation at any time during normal operating hours, without
15 prior notice, and the owner and manager shall assist the inspector
16 by providing access to all areas, personnel, and records requested
17 by the inspector; and

18 (6) The facility shall display in a conspicuous place
19 near the place where body art is performed the following records:

20 (a) The current license to operate a body art facility;

21 (b) The current licenses or registrations of all persons
22 performing body art; and

23 (c) The rating sheet from the most recent operation
24 inspection.

25 Sec. 35. (1) Each body art facility license issued under
26 the Nebraska Cosmetology Act shall expire and be subject to renewal
27 on September 30 of each odd-numbered year. The procedure for
28 renewing a body art facility license shall be in accordance with

1 section 71-110.01, except that in addition to all other
2 requirements, no body art facility license may be renewed unless
3 the facility has attained a rating of satisfactory on its most
4 recent operation inspection. Any facility not able to meet such
5 requirement shall have its license placed on inactive status until
6 all deficiencies of operation have been corrected, and the facility
7 shall not be open to the public during the time its license is
8 inactive.

9 (2) The license of a body art facility that has been
10 revoked for any reason may not be reinstated. An original
11 application for licensure shall be submitted and approved before
12 such facility may reopen for business.

13 Sec. 36. (1) Each body art facility license issued shall
14 be in effect solely for the owner or owners and premises named
15 thereon and shall lapse automatically upon any change of ownership
16 or location. An original application for licensure shall be
17 submitted and approved before such facility may reopen for
18 business.

19 (2) The owner of each body art facility shall have full
20 responsibility for ensuring that the facility is operated in
21 compliance with all applicable laws, rules, and regulations and
22 shall be liable for any and all violations occurring in the
23 facility.

24 Sec. 37. Section 71-3,106, Reissue Revised Statutes of
25 Nebraska, is amended to read:

26 71-3,106. The Nebraska Cosmetology Act does not apply to
27 or restrict the activities of the following:

28 (1) Any person holding a current license or certificate

1 issued pursuant to Chapter 71 when engaged in the usual and
2 customary practice of his or her profession or occupation;

3 (2) Any person engaging solely in ear piercing; ~~τ~~
4 ~~tattooing, or other invasive beautification practices;~~

5 (3) Any person when engaged in domestic or charitable
6 administration;

7 (4) Any person performing any of the practices of
8 cosmetology or nail technology solely for theatrical presentations
9 or other entertainment functions;

10 (5) Any person practicing cosmetology, electrology,
11 esthetics, or nail technology within the confines of a hospital,
12 nursing home, massage therapy establishment, funeral establishment,
13 or other similar establishment or facility licensed or otherwise
14 regulated by the department, except that no unlicensed or
15 unregistered person may accept compensation for such practice;

16 (6) Any person providing services during a bona fide
17 emergency;

18 (7) Any retail or wholesale establishment or any person
19 engaged in the sale of cosmetics, nail technology products, or
20 other beauty products when the products are applied by the customer
21 or when the application of the products is in direct connection
22 with the sale or attempted sale of such products at retail;

23 (8) Any person when engaged in nonvocational training;

24 (9) A person demonstrating on behalf of a manufacturer or
25 distributor any cosmetology, nail technology, ~~or~~ electrolysis, or
26 body art equipment or supplies if such demonstration is performed
27 without charge; and

28 (10) Any person or licensee engaged in the practice or

1 teaching of manicuring.

2 Sec. 38. Section 71-3,169, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 71-3,169. (1) The department shall conduct inspections
5 as required by the Nebraska Cosmetology Act. Two types of
6 inspections shall be conducted which shall be known as operation
7 inspections and accreditation inspections. An operation inspection
8 shall be conducted to ascertain that an establishment or a facility
9 is operating in full compliance with all laws, rules, and
10 regulations. An accreditation inspection shall be conducted to
11 accomplish the purposes of an operation inspection and to ascertain
12 that a school of cosmetology, a nail technology school, a school of
13 esthetics, a school of electrology, or an apprentice salon is
14 maintaining academic standards and requirements of a quality
15 consistent with the purpose of the Nebraska Cosmetology Act. All
16 accreditation inspections shall be announced at least two weeks
17 prior to the actual inspection.

18 (2) The board and the department shall adopt and
19 promulgate rules and regulations governing the standards and
20 criteria to be used in the conduct of inspections, the rating
21 system to be used, and the level of achievement necessary to
22 receive a passing grade.

23 (3) Operation inspections shall be unannounced and shall
24 be conducted during the normal working hours of the establishment
25 or facility. The inspector shall make every effort to gather the
26 information he or she needs to complete the operation inspection in
27 an inconspicuous manner.

28 (4) At the conclusion of the inspection, the owner or

1 manager of the establishment or facility shall receive a copy of
2 the rating form, which form shall be promptly displayed, and a
3 verbal statement of any deficiencies noted.

4 Sec. 39. Section 71-3,170, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 71-3,170. If a cosmetology establishment, a nail
7 technology establishment, ~~or~~ an electrology establishment, or a
8 body art facility receives a rating of unsatisfactory, it shall
9 submit evidence to the department within fifteen days providing
10 proof of corrective action taken. A repeat inspection shall be
11 conducted within sixty days after the original inspection to
12 determine if corrective action has occurred. The department may
13 assess a fee for each repeat inspection required. If the
14 establishment or facility receives an unsatisfactory rating on the
15 repeat inspection, or if evidence is not submitted within fifteen
16 days, the ~~establishment~~ license shall immediately be placed on
17 inactive status pending action by the department, and the
18 establishment or facility may not operate in any manner while its
19 license is inactive.

20 The owner or manager of an establishment or a facility
21 whose license has been placed on inactive status shall appear
22 before the board and the department to show cause why the
23 department should not ask the Attorney General to initiate steps to
24 revoke the license. The department may, as a result of such
25 appearance, grant additional time for corrective action to occur,
26 but the establishment or facility may not operate during such time.
27 The establishment or facility may not return to operation until it
28 has achieved a satisfactory rating on an inspection.

1 Sec. 40. Section 71-3,174, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 71-3,174. (1) Persons, and cosmetology, nail technology,
4 and electrology establishments, and body art facilities holding
5 licenses, registrations, or permits under the Nebraska Cosmetology
6 Act shall be subject to the disciplinary actions described in
7 section 71-155 and in sections 71-3,170 to 71-3,173 upon the
8 finding by the director that a violation has occurred.

9 (2) A person not holding a license, registration, or
10 permit under the Nebraska Cosmetology Act shall, upon conviction of
11 violation of such act, except as specific penalties are otherwise
12 imposed, be guilty of a Class II misdemeanor. Any such person
13 convicted of a second violation of the Nebraska Cosmetology Act,
14 except as specific penalties are otherwise imposed, shall be guilty
15 of a Class I misdemeanor.

16 (3) Any person engaging in any of the practices of
17 ~~cosmetology~~ regulated under the Nebraska Cosmetology Act, operating
18 ~~a cosmetology establishment,~~ engaging in any of the practice of
19 ~~nail technology,~~ operating a nail technology establishment,
20 engaging in any of the practices of electrology, operating an
21 ~~electrology establishment,~~ or engaging in any of the practices of
22 ~~esthetics~~ an establishment or a facility without being duly
23 licensed or registered under the Nebraska Cosmetology Act, any
24 person engaging in the provision of home services without having
25 complied with such act, or any person found to be acting in
26 violation of the Nebraska Cosmetology Act may be restrained by a
27 temporary or permanent injunction.

28 Sec. 41. Section 71-3,177, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 71-3,177. Each of the following may be considered an act
3 of unprofessional conduct when committed by a person licensed or
4 registered under the Nebraska Cosmetology Act:

5 (1) Performing any of the practices ~~of cosmetology, nail~~
6 ~~technology, esthetics, or electrology~~ regulated under the Nebraska
7 Cosmetology Act for which an individual is not licensed or
8 registered;

9 (2) Obstructing, interfering, or failing to cooperate
10 with an inspection or investigation conducted by an authorized
11 representative of the department when acting in accordance with the
12 Nebraska Cosmetology Act;

13 (3) Failing to report to the department a suspected
14 violation of the Nebraska Cosmetology Act;

15 (4) Aiding and abetting an individual to practice any of
16 the practices ~~of cosmetology, nail technology, esthetics, or~~
17 ~~electrology~~ regulated under the Nebraska Cosmetology Act for which
18 he or she is not licensed or registered;

19 (5) Engaging in any of the practices ~~of cosmetology, nail~~
20 ~~technology, esthetics, or electrology~~ regulated under the Nebraska
21 Cosmetology Act for compensation in an unauthorized location;

22 (6) Engaging in the practice of any healing art or
23 profession for which a license is required without holding such a
24 license;

25 (7) Enrolling a student or an apprentice without
26 submitting a complete student entrance notification to the
27 department;

28 (8) Knowingly falsifying any student or apprentice record

1 or report;

2 (9) Initiating or continuing home services to a client
3 who does not meet the criteria established in the Nebraska
4 Cosmetology Act;

5 (10) Knowingly issuing a certificate of completion or
6 diploma to a student or an apprentice who has not completed all
7 requirements for the issuance of such document;

8 (11) Failing, by a school of cosmetology, a nail
9 technology school, a school of electrology, a school of esthetics,
10 or an apprentice salon, to follow its published rules;

11 (12) Violating, by a school of cosmetology, nail
12 technology school, school of esthetics, or school of electrology,
13 any federal or state law involving the operation of a vocational
14 school or violating any federal or state law involving
15 participation in any federal or state loan or grant program;

16 (13) Knowingly permitting any person under supervision to
17 violate any law, rule, or regulation or knowingly permitting any
18 establishment or facility under supervision to operate in violation
19 of any law, rule, or regulation;

20 (14) Receiving two unsatisfactory inspection reports
21 within any sixty-day period; ~~and~~

22 (15) Engaging in any of the practices ~~of cosmetology,~~
23 ~~nail technology, esthetics, or electrology~~ regulated under the
24 Nebraska Cosmetology Act while afflicted with any active case of a
25 serious contagious disease, infection, or infestation, as
26 determined by the department, or in any other circumstances when
27 such practice might be harmful to the health or safety of clients;
28 and

1 (16) Violating any rule or regulation relating to the
2 practice of or instruction in the practice of body art.

3 Sec. 42. Section 71-3,179, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 71-3,179. The department, with the assistance of the
6 board, shall adopt and promulgate all rules, regulations, and
7 guidelines necessary for the administration of the Nebraska
8 Cosmetology Act. In particular, the department shall adopt and
9 promulgate the following rules and regulations:

10 (1) Minimum standards governing licensure, license
11 renewal, discipline of licensees, and license reinstatement;

12 (2) Operation of schools of cosmetology, nail technology
13 schools, schools of esthetics, schools of electrology, and
14 apprentice salons, including standards and requirements governing
15 application, curriculum, course of study, hours and credits, staff
16 and faculty, student and nail technology student admission and
17 registration, student instructor, nail technology student
18 instructor, and apprentice admission and registration, instruction
19 and supervision, textbooks, transfers, examinations, grading and
20 evaluation, graduation requirements, records, reporting
21 requirements, sanitation, attire, school and salon rules and
22 policies, smoking, subject content, lesson plans, methods of
23 counting and recording hours and credits, library facilities, space
24 requirements, teaching equipment and apparatus, supplies,
25 organization and administration, transfer of location, closing a
26 school, change of ownership or location, scheduling of courses,
27 class size, ratio of instructors, esthetics instructors, or nail
28 technology instructors to students or nail technology students,

1 clinical experience requirements and locations, inspections,
2 license renewal procedures and requirements, and any other related
3 areas;

4 (3) Minimum standards governing the licensure, license
5 renewal, discipline of licensees, license reinstatement, and
6 operation of satellite classrooms, including movement of students
7 among satellite classrooms and home schools, location of records,
8 ratio of students to instructors, inspections, reporting
9 requirements, and any other related areas;

10 (4) Minimum standards governing the licensure, license
11 renewal, discipline of licensees, license reinstatement, and
12 operation of cosmetology salons, nail technology salons, and
13 esthetics salons, including standards and requirements governing
14 space, facilities, equipment, hours of operation, cleanliness and
15 sanitation, smoking, laundry, storage facilities, instruments,
16 implements, materials and supplies, methods and particular aspects
17 of sanitizing, pets, toilet facilities, water, client files,
18 employment and supervision of temporary practitioners, practices
19 permitted, application, inspection, sale or change of ownership,
20 closing a salon, records, reporting requirements, license renewal
21 standards and procedures, and any other related areas;

22 (5) Situations constituting a conflict of interest for
23 board members and procedures for dealing with such situations;

24 (6) Procedures for the conduct and grading of
25 examinations and performance standards for examinations;

26 (7) Minimum standards governing the licensure, license
27 renewal, discipline of licensees, license reinstatement, and
28 operation of cosmetic establishments including type and amount of

1 instruction provided to cosmeticians or electrologists, safety and
2 sanitary procedures and standards, application, inspection,
3 reporting requirements, license renewal standards and procedures,
4 and any other related areas;

5 (8) Minimum standards governing the registration,
6 expiration, discipline, and practice of cosmeticians, nail
7 technicians, electrologists, guest artists, guest body artists,
8 nail technology students, nail technology student instructors,
9 students, apprentices, student instructors, nail technology
10 temporary practitioners, ~~and~~ temporary practitioners, and temporary
11 body art practitioners, including application, supervision, type of
12 training received, locations of practice, reporting requirements,
13 grounds for discipline, and any other related areas;

14 (9) Continuing competency requirements for persons
15 licensed under the Nebraska Cosmetology Act as approved by the
16 board under section 71-377;

17 (10) Criteria and standards to be used in the conduct of
18 inspections and procedures to be used in the conduct of inspections
19 and investigations, including rating systems, level of achievement
20 necessary to receive a passing grade, conduct of inspections and
21 investigations, and any other related areas;

22 (11) Minimum standards governing the granting, discipline
23 of, and renewal of home services permits, nail technology home
24 services permits, or home services permits for electrology and the
25 provision of home services; ~~and~~

26 (12) Acts constituting unprofessional conduct on the part
27 of licensed and registered practitioners, ~~and~~ licensed
28 establishments and nail technology establishments, and licensed

1 body art facilities; and

2 (13) Separate education and training standards for the
3 licensure and practice of each of the practices of body art.

4 Sec. 43. No person shall perform body art on or to any
5 person under eighteen years of age without the prior written and
6 notarized consent of the parent or court-appointed guardian of such
7 person. The person giving such consent must be present during the
8 procedure. The written permission, and a copy of the letters of
9 guardianship when such permission is given by a guardian, shall be
10 retained for a period of five years by the person performing such
11 body art. Violation of this section is a Class III misdemeanor.

12 Sec. 44. Nothing in the Nebraska Cosmetology Act shall
13 be construed to authorize a person performing body piercing to
14 implant or embed foreign objects into the human body or otherwise
15 to engage in the practice of medicine and surgery.

16 Sec. 45. This act becomes operative on January 1, 2005.

17 Sec. 46. Original sections 71-110.01, 71-162, 71-340 to
18 71-343, 71-364, 71-376, 71-377, 71-386, 71-396, 71-397, 71-398,
19 71-3,100, 71-3,104, 71-3,105, 71-3,106, 71-3,169, 71-3,170,
20 71-3,174, 71-3,177, and 71-3,179, Reissue Revised Statutes of
21 Nebraska, are repealed.